IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 828 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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MADHUDHA KELAVANI MANDAL - Petitioner(s)

Versus

ROHITKUMAR KANUBHAI PARMAR - Respondent(s)

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Appearance :

MR SHELAT for MR GM JOSHI for Petitioner No(s).: 1.

MR PF ADHVARYU for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 17/06/2005

ORAL JUDGMENT

1. This petition is directed against the order passed in application dated 31.1.2000 by the learned Extra Assistant Judge at Nadiad in Payment of Wages Appeal No. 117 of 1999, whereby the learned Judge has permitted the respondent to withdraw the amount of Rs.1,10,000=00 deposited by the petitioner.

2. The short facts of the case are that the respondent was appointed as part-time peon on a lump sum amount of Rs.100=00 per month and the same was gradually increased to Rs.800=00 per month. It is the case of the petitioner that though no pay scales were prescribed for the post of peon in the establishment of the Primary School, the respondent preferred an application under Section 15(2) of the Payment of Wages Act, 1936 being Payment of Wages Application No. 12 of 1996 for an amount of Rs.1,10,000=00 towards the difference of salary and allowances. The concerned authority by order dated 06.05.1999 held that the respondent was entitled to get an amount of Rs.1,10,000=00.
3. Being aggrieved by the said order, the petitioner preferred an appeal under Section 17 of the Act before the District Court, Nadiad, being Appeal No. 117 of 1999. It is the case of the petitioner that as a pre-condition, the said amount of Rs.1,10,000=00 was ordered to be deposited before the Authority. In the meanwhile, the respondent moved an application for withdrawal of the amount in question. The learned Extra Assistant Judge, without confirming the authority of the person making the endorsement, passed the impugned order. Hence, this petition.
4. Mr. Shelat learned advocate appearing for Mr.G M Joshi for the petitioner has submitted that the Appeal in question is still pending and that it has not been heard. He has further submitted that if the amount in question is permitted to be withdrawn, then it willbe very difficult for the petitioner to recover the said amount from the respondent. He has, therefore, submitted that the impugned order dated 15/02/2000 passed by the Court wherein the order passed on application dated 31st December, 2000 in Payment of Wages Application No. 117 of 1999 be confirmed and the Appeal be expedited.
5. I have heard the learned advocates for the respective parties and have perused the relevant material on record. By order dated 06.05.1999, the Authority under the Payment of Wages Act had held that the respondent was entitled to get an amount of Rs.1,10,000=00 as demanded by him against which Appeal was preferred before the District Court, Nadiad. Since the said Appeal has not been disposed of finally, the learned Judge ought not to have permitted the respondent to withdraw the amount in question. The learned Judge had permitted the said withdrawal on the basis of an endorsement of a person who had no authority to make such an endorsement as a Member. In my opinion, the learned Judge has committed a grave error in permitting the withdrawal of the amount in question. Hence, in view of the peculiar facts and circumstances of the case, I am of the opinion that ends of justice would be met if the Appellate Court is directed to expedite the hearing of the Appeal in question while continuing the order dated 15/02/2005 passed by this Court.
6. Accordingly, the order dated 06.05.1999 passed by the learned Extra Assistant Judge at Nadiad in Payment of Wages Appeal No. 117 of 1999 is quashed and set aside. The learned Extra Assistant Judge, Nadiad is directed to hear and dispose of the Appeal being Payment of Wages Appeal No. 117 of 1999 as expeditiously as possible and preferably within a period of six months from the receipt of writ of this order. It is clarified that the order dated 15/02/2000 passed by this Court, wherein the order passed in Payment of Wages Application No.117 of 1996 dated 31stDecember, 2000 was stayed, shall continue till the final disposal of the Appeal in question.

7. With the above observations and directions, the petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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